

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
REPLY BRIEF**



76-1113

To be argued by  
LEONARD J. LEVENSON

*13*  
*875*

In The  
UNITED STATES COURT OF APPEALS  
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

-against-

JORGE GONZALEZ a/k/a JORGE ARBOLEDE,

Defendant-Appellant.

On Appeal from the United States District  
Court for the Southern District of New York

REPLY BRIEF FOR DEFENDANT-APPELLANT

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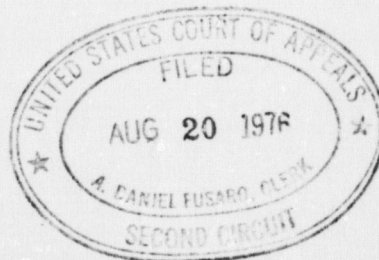


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AUTHORITIES CITED

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UNITED STATES COURT OF APPEALS  
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-----x  
UNITED STATES OF AMERICA,

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-against-

JORGE GONZALEZ a/k/a JORGE ARBOLEDE,

Defendant-Appellant.  
-----x

STATEMENT OF FACTS

Appellant JORGE GONZALEZ was found guilty basically because the evidence produced during the trial against the many defendants prejudiced the minimal "so-called" evidence tying JORGE GONZALEZ in as a co-defendant. The evidence in chief against JORGE GONZALEZ comprised a few short wiretaps which in the hands of the Government were made to appear to be conversations in code between himself and MONO. In fact, the Government's brief on pages 87 to 89 "knowingly" describes these conversations about cattle and the market for cattle as code for narcotics. Surprisingly the Government's brief (87-89) describes a scene which could only be created by hindsight information and indeed a vigorous imagination.

JORGE GONZALEZ had a job working for his brother ARTURO GONZALEZ and in his capacity while working with precious stones would answer the telephone messages for his brother. It is only fair to say that because MONO was one of the principal callers to ARTURO GONZALEZ that JORGE GONZALEZ became familiar with his voice but nevertheless never met MONO. This is substantiated by the Government's taped conversations wherein JORGE GONZALEZ says to MONO that we should get together and meet each other one of these days. This taped conversation was conveniently never produced for the Jury's hearing.

The Government's brief on page 6 takes the liberty of introducing a fact pattern which was unproven during the trial. Specifically the Government expanded the fact that JORGE GONZALEZ worked for his brother ARTURO GONZALEZ and now assumes that JORGE GONZALEZ was working for both SARMIENTO and ARTURO GONZALEZ and further describes his work not as sorting precious stones but as having to do with concealed marijuana. Conveniently the Government fails to refer anywhere to the trial transcripts to show where this is so.

Again page 13 of the Government's brief repeats this same distortion and creation of fictions by putting JORGE GONZALEZ in the same class as MEJIAS and BRUNO BRAVO.



However, none of this was introduced into the trial to substantiate the veracity of these statements.

Page 14 describes evidence "concerning other participants also revealed the frequent contacts among the importers of the organization" and then this paragraph continues to name the various participants. However, JORGE GONZALEZ' name is never mentioned underlining the basic fact that JORGE GONZALEZ was indeed a dupe of his brother ARTURO GONZALEZ and not a co-conspirator.

The alibi witness that appellant JORGE GONZALEZ had at the trial indeed described JORGE GONZALEZ as an outside jewelry salesman and of course had never seen JORGE GONZALEZ sell anything since JORGE'S sales were not in the store but on a route. In fact, both the alibi witness and character witness spoke highly of JORGE.

At the time of JORGE GONZALEZ' and ARTURO GONZALEZ' arrest while both men were both housed in West Street Men's House of Detention ARTURO GONZALEZ expressed his deep conviction in the innocence of his brother JORGE and stated to his attorney LOUIS A. TIRELLI that he would testify that his brother JORGE was innocent.

Do to the long period between JORGE GONZALEZ' arrest and his trial JORGE'S two exculpatory witnesses

were lost to him. If this is not a violation of JORGE GONZALEZ' Sixth Amendment rights to a speedy trial then it strains the imagination where any defendant could have a violation of his Sixth Amendment rights.



## ARGUMENT

### POINT ONE

#### APPELLANT'S CLAIM TO A VIOLATION OF HIS SIXTH AMENDMENT RIGHTS

It is submitted that JORGE GONZALEZ' claim that he was deprived of his right to a speedy trial is meritorious and that the four-point balancing test enunciated in Barker v. Wingo 407 U.S. 514 (1972) substantiates this fact, as follows:

1. The length of the delay between the arrest on September 17, 1974 on the original indictment and the trial was thirteen months. The Government's argument is that cases similar to United States v. Infanti 474 F.2d 522 (2d Cir. 1973) should be the ruling rather than pointing out the tremendous prejudice accorded a defendant who must rot in jail for long periods of time before being able to prove his innocence.

2. The reason for the delay when JORGE GONZALEZ was initially indicted was not that it was a complex conspiracy case for there were few involved in the original arrest but the reason for the delay was that the Government blatantly refused to prosecute on the original indictment because they realized that they would have little evidence to convict JORGE GONZALEZ. Only by lumping JORGE GONZALEZ into a superseding

indictment where the evidence against many of the co-defendants was so horrendous that it would prejudice twelve laymen selected as jurors would the Government be able to get convictions against JORGE GONZALEZ. Indeed although the defense made numerous pretrial motions on behalf of JORGE GONZALEZ the Government continually and blatantly failed to file responses to the motions and the Bench continued this action by failing to decide in favor of JORGE GONZALEZ and continually extended the period of time for the Government to file their response. Indeed it was more than one time that MICHAEL Q. CAREY was admonished by the Court for failing to file a reply to the outstanding motion and was then given additional time in which to file the said reply even though the same was not requested by MR. CAREY.

3. The Government, as indicated on page 58 of their brief, recognizes that defendant asserted his right to a speedy trial throughout his long incarceration.

4. Could any defendant be more prejudiced than to lose the only two exculpatory witnesses available to him because of the Government's delay. The Government states that these witnesses were not made unavailable by illness or by death. ARTURO GONZALEZ had stated explicitly that while in prison supra that he would testify that his brother had nothing to do with any of



the charges. Indeed if the Government had moved expeditiously in the early indictment there would have been no unavailability of exculpatory witnesses for JORGE GONZALEZ.

POINT TWO

THE GOVERNMENT'S CLAIM  
OF READINESS

The Government speaks in their brief on page 52 and thereafter with a forked tongue. On the one hand the Government would have us believe that their filing of a Notice of Readiness indicated that the Government was both willing and prepared to go to trial. In fact they use former JUDGE TYLER'S statement on page 54 of their brief (4/17/75 Tr. at 18-20) that the Government could have proceeded to trial without the use of transcripts.

It is submitted to this Honorable Court that quite to the contrary not only did the Government lack transcripts which they themselves and not appellants required to proceed through the trial but further they did not even have a trial plan prepared. The Government was lagging in going to trial merely to develop sufficient evidence to produce at trial so that they could obtain a conviction and never was the Government concerned with supplying the appellants with transcripts. Your appellant through his attorney LOUIS A. TIRELLI continuously and vigorously argued for an immediate trial. The Government in fact did everything in its power including failure to reply to pretrial



motions in order to prevent granting the appellant a speedy trial. The delay by the Government was blatant and inexcusable and the translations were required for the Government's trial rather than to give the appellants additional help. Your appellant had continually and unsuccessfully demanded a speedy trial and stringently argued against the Government's submission of a Notice of Readiness.

Were this Honorable Court to condone this practice by the United States Attorney's Office Rules 3 and 4 (Speedy Trial Rules) it would merely be used to give lip service to the constitutional rights provided all peoples in this United States of America.

POINT THREE

REASONS FOR EXTENDED PERIODS  
OF INFORMAL DISCOVERY

As noted above the United States Attorney's Office continually and blatantly failed to reply to outstanding pretrial motions submitted to the lower Court. Indeed motions submitted as indicated on page 56 of the Government's brief took inordinate amounts of time to be answered. For example, motions to suppress and to sever were outstanding for one month and three weeks (March 3rd to April 21st). Accordingly, appellant was unable to obtain immediate satisfaction in the lower Court on any of his pretrial motions. Thus the Government's present posture of having fifteen weeks excluded from the time period used to compute its time for readiness for trial under Rules 3 and 4 of this Court is unconvincing.



POINT V

GOVERNMENT'S ASSERTION OF  
INDEPENDENT KNOWN HEARSAY  
EVIDENCE IN SUPPORT OF  
APPELLANT'S CONVICTION  
IS NON-EXISTENT

Taped conversations in no way show that JORGE GONZALEZ assisted SARMIENTO, ARTURO GONZALEZ and BRUNO BRAVO as indicated on page 87 of the Government's brief. Again it is only in hindsight and reconstructing facts to fit in with taped conversations that the Government can allege that JORGE GONZALEZ was aware of any acts of his co-conspirators. Page 88 refers to a "code" between JORGE and MONO but again this code could only be created in hindsight. Indeed JORGE in one of his tapes entreats MONO to go to the authorities since they are doing nothing illegal. How then can the Government say that appellant was\* involved as a co-conspirator. Appellant had no consciousness of guilt and therefore this fact should be taken into consideration by this Honorable Court. It is further submitted that JORGE GONZALEZ was an illegal immigrant and that his carrying false identification was merely to prevent his being

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\*Tape 553 5/20/74

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August 23, 1976

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United States Court of Appeals  
Second Circuit  
United States Court House  
Foley Square  
New York, N.Y. 10007

Att: Miss Sophia Korecki

Re: United States of America  
v. Jorge Gonzalez a/k/a  
Jorge Arboleda  
76-1113

Dear Miss Korecki:

As per our telephone conversation of today, I enclose  
herewith the following:

1. Four copies of Reply Brief in the above captioned  
matter.
2. Copy of letter to United States Court of Appeals  
dated August 19, 1976, together with copy of  
Affidavit of Service sworn to August 19, 1976,  
which was enclosed therein.

Yours very truly,

*Thelma Kirshenbaum*

Thelma Kirshenbaum

Secretary to Louis A. Tirelli



LOUIS A. TIRELLI

ATTORNEY AT LAW

August 19, 1976

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United States Court of Appeals  
Second Circuit  
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Foley Square  
New York, N.Y. 10007

Att: Miss Sophia Korecki

Re: United States of America  
v. Jorge Gonzalez a/k/a  
Jorge Arbel  
76-1113

Dear Miss Korecki:

Enclosed please find four required copies of  
Reply Brief in the above captioned matter, together  
with affidavit showing service thereon.

Yours very truly,

*Louis A. Tirelli*  
LAT:tk  
Encs.

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

- - - - - X

UNITED STATES OF AMERICA,

Appellee,

-against-

JORGE GONZALEZ a/k/a JORGE ARBOLEDE,

Defendant-Appellant.

- - - - - X

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF ROCKLAND)

THELMA KIRSHENBAUM, being duly sworn, deposes and says that deponent is not a party to the action is over 18 years of age and resides at 78 Susan Drive, New City, New York. That on the 19th day of August, 1976, deponent served the within Reply Brief for Defendant-Appellant by a copy of mailing/the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressees as indicated below:

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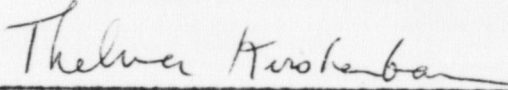
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Thelma Kirshenbaum

Sworn to before me this  
19th day of August, 1976

  
NOTARY PUBLIC, New York

Residing in New York County  
Commission Expires March 30, 1978



deported from this country and not to enhance his assumed acts of an illegal character in narcotics.

#### CONCLUSION

From the above it can be clearly seen that JORGE GONZALEZ was not only prejudiced by having his trial delayed for thirteen continuous months in spite of his continuous demands for an immediate trial but further that appellant lost his only exculpatory witnesses because of the Government's delay. Further this continued delay by the Government was one of a planned latent act enabling the Government to obtain sufficient co-conspirators to prejudice appellant's trial and cause his conviction not due to his own acts but to the acts of co-conspirators. Accordingly, it is submitted that this Court should find for JORGE GONZALEZ and grant appellant at the very least a new trial.

Respectfully submitted,

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